IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 190 of 1995

in

SPECIAL CIVIL APPLICATION No 3027 of 1991

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI and

MR.JUSTICE C.K.THAKKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD DISTRICT COOP BANK LTD

Versus

NEW JASHPARK COOPERATIVE HOUSING STY LTD

Appearance:

MR SHIRISH JOSHI for Appellant

NOTICE SERVED BY DS for Respondent No. 1, 6

MR MB GANDHI for Respondent No. 2

DS AFF.NOT FILED (R) for Respondent No. 5

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI and

MR.JUSTICE C.K.THAKKAR

Date of decision: 25/01/2000

ORAL JUDGEMENT: (Per C.K. Thakkar, J.)

This appeal is filed against the decision in Special Civil Application No.3027 of 1991 by the learned single Judge on February 4, 1995.

Shortly stated, the facts are that the Ahmedabad District Cooperative Bank Limited (`Bank', for short) advanced loan to New Jashpark Cooperative Housing Society Limited (`Society', for short) in the year 1981-'82. It is an admitted fact that it was a short-term loan but there was default on the part of the appellant in repayment of loan and the payment was not made. It was stated that in view of default in repayment, Lavad Suit No.294 of 1989 was instituted before the Board of Nominee. The Board of Nominee passed an Award on 27th of July, 1990 for an amount of Rs.28,57,245.95 Ps. Being aggrieved by the Award passed by the Board of Nominee, two appeals were filed before the Gujarat Cooperative Tribunal, being Appeal No.269 of 1990, filed by the Chairman and Secretary of the Society, and Appeal No.275 of 1990, filed by the Society. Both the appeals were dismissed by the Tribunal by a judgment and order dated 25th of September, 1990. Being aggrieved by the said judgment, the Society filed Special Civil Application No.3027 of 1991. The matter came up for hearing before the learned single Judge. The learned Single Judge was of the view that the petition did not deserve admission and accordingly, it was dismissed. While dismissing the petition, however, the learned single Judge observed as under :-

> "... The only grievance of the petitioner-Society is that the Chairman and Secretary and the members of the executive committee of the society have committed some malpractice and other 111 members of the Cooperative Housing Society are being made to suffer. If that be so, it is really an unfortunate thing. However, in view of this allegation, it would be proper that if the bank proceeds against the property held and occupied by the then Chairman and Secretary of the Society and the then members of the Executive Committee. It would not be difficult for the bank to obtain the names of the Chairman and Secretary and members of the

> managing committee of the Society who were holding the posts at the relevant time. It is hoped that for realization of the dues, the bank will first pursue the property allotted and occupied by the Chairman and Secretary and the then members of the Executive Committee who were the office bearers of the Society at the relevant time ...."

Being aggrieved by the above part of the direction in the judgment, the Bank has filed the present Letters Patent Appeal. The matter was ordered to be fixed for final hearing in the first week of July, 1999.

We have heard Mr.Joshi, learned counsel for the appellant, and Mr.M.B. Gandhi, learned counsel for respondent No.2. So far as other respondents are concerned, they are served, but they do not appear.

Mr.Joshi, learned counsel for the appellant-Bank, contended that though the learned single Judge has stated that the petition did not require admission and dismissed the petition by discharging notice, in substance and in reality, the petition was partly allowed. He also submitted that there is no privity of contract between the Bank on the one hand and the Chairman, Secretary and office bearers on the other hand. The contract was only between the Bank and the Society and it was only the Society which was liable to repay the loan. He urged that if it was a case of the members of the Society that the office-bearers of the Society had misappropriated any amount, it was open to the Society to take appropriate proceedings in accordance with the Gujarat Cooperative Societies Act, 1961 against such office bearers. The Bank, however, cannot be deprived of legitimate dues, to which it was entitled and for which Award was passed which was confirmed even by the Cooperative Tribunal. He finally submitted that, as on today, a substantial amount of Rs.80,00,000/- is due and payable by the Society. The learned single Judge's order, therefore, requires interference and the Letters Patent Appeal deserves to be allowed.

Mr.Gandhi, learned counsel for respondent No. 2, on the other hand, supported the order passed by the learned single Judge. He raised a preliminary objection that the appeal is not maintainable as the petition was filed under Article 227 of the Constitution of India and no intra-court appeal would lie. On merits, he submitted that the case of the Society was that though the amount

might have been received by the Chairman, Secretary and Office Bearers of the Society, payment of such amount was not made to the Society. The learned single Judge was satisfied about the said fact and passed the order, which does not require interference. Finally, he submitted that the learned single Judge has only directed first to proceed against the Chairman and Secretary of the Society. By that, the right of the Bank is otherwise not taken away. At the most, it was curtailed to some extent. Such a discretionary order should not be interfered with in the exercise of appellate power of this Court.

In the facts and circumstances of the case, in our opinion, the Letters Patent Appeal deserves to be allowed. So far as the preliminary objection is concerned, in the facts and circumstances, it is obvious that the learned single Judge has exercised plenary power under Article 226 of the Constitution, inasmuch as, no supervisory jurisdiction could have been exercised by issuing directions issued by the learned Single Judge and interfering with the Award passed by the Board of Nominees as well as Gujarat Cooperative Tribunal, which was in accordance with the provisions of law. In our opinion, by partly allowing the petition and issuing directions, the learned single Judge has acted contrary to law and such an order could not have been passed under Article 227 of the Constitution, depriving the power and authority of the Bank to recover loan from the Society, which had taken loan from the Bank. LPA is, therefore, maintainable.

On merits, it is clear that there is no privity of contract between the Bank and office bearers of the Society. The loan was advanced to the Society and thus, only the Society was the debtor. In these circumstances, it was only the Society, which was liable to repay the amount of loan. Since it was not done, obviously, the Bank was within its power to take appropriate proceedings, which culminated into Award, which was confirmed by the Gujarat Cooperative Tribunal. The directions of the learned Single Judge are, therefore, contrary to law and are liable to be set aside.

For the foregoing reasons, in our opinion, the Letters Patent Appeal deserves to be allowed and it is accordingly allowed. The order passed by the learned single Judge is set aside and the Award passed by the Board of Nominees and confirmed by the Gujarat Cooperative Tribunal is hereby restored. In the facts and circumstances, no order as to costs.

****

(apj)